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ABSTRACT

This is one of several papers presented at a Federal Trade Commission Symposium on Media Concentration. A statement by the Authors Guild, it examines the merger-takeover trend in book publishing. The Authors Guild feels that the merger trend in book publishing has passed beyond the warning line drawn by the antimerger clause of the Clayton Act, Section 7; threatens competition in the literary market place and the survival of a structure composed of numerous independent publishing companies; threatens the individual author's bargaining power, income, and opportunities to be published; and endangers the uninhibited marketplace of ideas guaranteed by the First Amendment. The supplemental memorandum explores the proposed acquisition of the Book-of-the-Month-Club by the Time, Inc./Little, Brown publishing complex. It also contains a sample of statistical figures for the book club and mass paperback markets from recent statistical reports published by The Association of American Publishers. (MKM)

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STATEMENT OF THE AUTHORS GUILD

on

The Continuing Trend To Concentration Of Power In The Book Publishing Industry

(The following statement was authorized by the Council of The Authors Guild.)

PUBLISHERS WEEKLY, trade journal of U.S. book publishing, reports in its latest yearly Review that "mergers and takeovers continued to homogenize the industry, with an ongoing tendency to ally a major paperback house with every major hardcover publisher."

In this statement, The Authors Guild will demonstrate that the merger-takeover trend in book publishing:

has passed far beyond the warning line drawn by the anti-merger clause of the Clayton Act - Section 7;

threatens competition in the literary marketplace and the survival of a structure composed of numerous independent publishing companies;

threatens the individual author's bargaining power, income and opportunities to be published; and

endangers the uninhibited "marketplace of ideas" guaranteed by the First Amendment.

Section 7 was enacted to halt such a march to economic concentration and oligopoly. The section calls for action now by the Federal Trade Commission or Department of Justice to halt the trend and undo the damage it has inflicted on the book publishing structure. In addition to divestiture, other steps can be taken promptly to end some of its restrictive effects. These are discussed below.

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Some Recent Acquisitions

These are some of the recent acquisitions reported by PUBLISHERS WEEKLY:

Doubleday & Company, the nation's largest general trade book publisher, took over Dell Publishing, one of the leading mass market paperback publishers. Doubleday's publishing complex includes one of the two largest book clubs, The Literary Guild.

Fawcett Publications, another major paperback publisher, was purchased by the Columbia Broadcasting System. The CBS publishing complex includes another mass market paperback publisher (Popular Library), a prominent hardcover publisher (Holt, Rinehart & Winston); a science-textbook publisher (W.B. Saunders), and 25 magazines.

Gulf & Western acquired Simon & Schuster (and its subsidiary Pocket Books, a leading paperback firm). The conglomerate previously had absorbed Paramount Pictures.

Viking Press, a major trade publisher, was integrated into Penguin Books.

The Los Angeles Times announced, then abandoned, its purchase of RCA's publishing complex. The broadcasting conglomerate's publishing group remains intact -- a reminder of how much concentration has occurred. The complex includes: Random House, a leading trade publisher; two competitors which Random had acquired (Alfred A. Knopf and Pantheon Books) before it was absorbed by RCA; a mass market paperback firm (Ballantine Books); and other enterprises.

Occasional setbacks in the merger trend have proven temporary. After ITT (owner of two major publishers) dropped its proposed acquisition of G.P. Putnam's Sons in 1973, Putnam soon was taken over by Music Corporation of America (owner of Universal Pictures.) This acquisition also gave MCA control of two other formerly-independent publishers that Putnam had absorbed: Coward, McCann & Geoghegan (trade books) and Berkley (paperbacks).

The Significance of Publishing's Acquisitions Trend

These recent acquisitions lengthen an already-long list of more than 300 mergers and takeovers during the past 20 years (see p.19), a list which conclusively demonstrates that book publishing is gripped by a "trend to concentration" and that the "trend in that industry is to oligopoly."(1) (Quotations from U.S. Supreme Court and other opinions are annotated at p. 20.)

The trend is highly significant under Section 7, which was added to the Clayton act "to arrest mergers at a time when a trend to lessening competition in a line of commerce is still in its incipiency..."(2) The section is designed to prevent or reverse acquisitions which "may tend to lessen competition"(3) or which occur in an industry where "an 'undue' number of competing enterprises have been eliminated."(4)

Section 7's danger signals have been flying in the publishing industry for some time. The 20-year list of acquisitions is in itself a history of the trend to concentration. During this period large publishing firms have used acquisitions to increase their size and share of various publishing markets. Conglomerates have merged or bought their way into

a significant position in the marketplace. And the process of concentration has bound formerly independent publishing firms to corporate owners which control broadcasting networks and stations, newspapers and magazines, motion picture and record companies, and cable-TV systems.

To say that "an 'undue' number of competing enterprises have been eliminated" from the publishing industry is to put it mildly indeed. Later in this statement we will call the roll of significant publishing firms which the inexorable trend to concentration has eliminated as independently-owned enterprises. It does not matter that the giant complexes and conglomerates that absorbed them, and some still-surviving independents, continue to compete; for "remaining vigor cannot immunize a merger if the trend in that industry is toward oligopoly."(5)

Nor can it be argued that the publishing industry, and the public's interest in it, is too insignificant to be protected from concentration or oligopoly under Section 7. The Courts have ruled that the Section can be applied to prevent or set aside mergers in an industry dedicated solely to supplying florists with aluminum foil(6); and in a product market confined to the sale of household liquid bleach.(7) The book publishing industry and each of its product markets are far more significant economically and socially.

The Probable Future Effect of Acquisitions is the Test Under Section 7

Since Sec. 7 prevents acquisitions which "may tend to lessen competition" and is intended to arrest a "trend to concentration"(8), its "very wording ...requires a prognosis of the future effect of the merger."(9) The section "commands the courts and Federal Trade Commission to examine" the "probable effect of the merger upon the future."(10)

The question is not whether publishing mergers and takeovers are "certain" to restrict competition, build oligopoly or cause other effects prohibited by the antitrust laws. The question, under Section 7, is whether such effects are probable, in the future. For there is

> "no requirement that the anticompetitive power manifest itself in anticompetitive action before Sec. 7 can be called into play. If the enforcement of Sec. 7 turned on the existence of actual anticompetitive practices, the congressional policy of thwarting such practices in their incipiency would be thwarted."(11)

It is clear that the unremitting trend of publishing mergers and takeovers has the probable effects of increasing concentration, furthering oligopoly, restricting competition and eliminating independent enterprises in the industry. A detailed case-by-case analysis requires the testimony of witnesses and production of financial records, inter-office memoranda and other documents, possible only in judicial proceedings, or hearings by the Federal Trade Commission or Congressional committees. Publishing executives, editors, and conglomerate officers are not likely to divulge such information to The Authors Guild or the press; nor are literary agents, who must continue to deal with conglomerate-owned houses and the large publishing firms which have expanded by acquisition.

But a Federal Trade Commission hearing or judicial action under Sec 7 is not necessary to describe some of the actual and probable effects of the publishing industry's trend to concentration and oligopoly. Here, we summarize some of the more obvious consequences.

Elimination of Independent Publishing Firms

A primary purpose of Section 7 is to perpetuate and preserve, for its own sake, the organization of an industry into many independent firms.(12) Congress was concerned with the threat of accelerated concentration to other values (considered below), as well as to competition.(13) Therefore, "where an industry was composed of numerous independent units, Congress appeared anxious to preserve this structure."(14)

Judged by this fundamental criterion, it is clear that the inexorable trend of publishing acquisitions requires prompt remedial action under Section 7. American book publishing was an industry composed of numerous independent firms. But mergers and takeovers have weakened this structure and threaten its very existence. Many trade and textbook publishing firms have been absorbed into giant publishing corporations or conglomerates. Those that have disappeared as independent separately-owned companies include many of the medium and large-sized firms that formed the backbone of the industry, made its most important economic and social contributions, and provided a large part of its production and competition. (There are a number of tiny publishing firms that account for a small part of the industry's production, and offer no effective competition to the diminishing number of major firms.)

One major publishing executive recently made this evaluation of the trend to concentration in the industry.

In an interview published on April 11, 1977, Richard E. Snyder, President of Simon & Schuster -- owned by Gulf & Western -- said:

> "... I was the voice that said many, many years ago there was going to be a consolidation in this industry before it even started to consolidate. However, it has gone well beyond what I ever thought it could go to. What we are going to see now, if this trend continues, is that like the seven sisters of the oil business we will have seven giant publishing companies of varying size, either as part of a conglomerate or become like a Doubleday, which in itself is a bit of a conglomerate."
> (PUBLISHERS WEEKLY; Vol. 211, No. 15; p.38)

The list of independent publishers which have lost their independence through merger and takeover in recent years, in itself proves that the industry's trend to concentration threatens the existence of the structure Section 7 was enacted to preserve. These are some of the companies on that list:

Ace Books	Little, Brown & Co.
Academic Press	William Morrow & Co.
American Book Company	New American Library
Ballantine Books	Pantheon Books
Berkley Publishing	Popular Library
Bobbs-Merrill	Frederick A. Praeger
Citadel Press	Pyramid Publications
Coward, McCann & Geoghegan	G.P. Putnam's Sons
Thomas Y. Crowell	Random House
John Day	Reinhold Publishing Corp.
Dell Publishing	Howard W. Sams
Dutton	W.B. Saunders
Fawcett	Simon & Schuster
Ginn & Company	Viking Press
Holt, Rinehart & Winston	D. Van Nostrand
Alfred A. Knopf	World Publishing

With fitting irony, the merger trend has washed away the independence of the industry's chronicler -- PUBLISHERS WEEKLY. Its parent R.R. BOWKER was acquired by the Xerox Corporation, ending more than 90 years of autonomous existence and causing Bowker to join other formerly-independent publishing companies which had surrendered themselves to conglomerates.

The Effect of Horizontal and Conglomerate Acquisitions on Independent Publishers

The absorption of separate publishing firms into larger publishing firms places the surviving independents at a serious competitive disadvantage. The expanded publishing complex has far greater financial resources. The competitive advantage thus gained is obvious in textbook and technical publishing, where a few huge companies dominate that product market: McGraw-Hill, Prentice-Hall, Macmillan, Scott, Foresman, Harper & Row, among others. The competitive advantage is equally significant in trade publishing. The many thousand new titles published annually must compete for a limited number of places in the retail stores. Success depends on the amount of working capital available for advertising, promotion, and production, all of which help determine bookstores' choices between competing titles. The buying practices of large retail chains, increasingly important in this market, magnify the independent publisher's disadvantage. The economic disparities created by mergers and takeovers also handicap independent publishers in bidding for books by the few established best-selling authors -- and even for books by less commanding writers, because the more extensive distribution system of the large publishing complex is an inducement to such authors.

The competitive disadvantages to surviving independent publishers increase as the trend to concentration continues. That, in turn, stimulates the trend by forcing more independents to sell out to larger firms or conglomerates, further weakening the structure and inhibiting the competition Sec. 7 was designed to protect. The

competitive disadvantages make it well-nigh impossible for new publishers to enter the field with any realistic hope of achieving the solid middle-level status that is necessary to provide meaningful competition and a real contribution to the literary marketplace.

The same effects occur when book publishers are acquired by non-publishing conglomerates. Their new owners' "deep pocket" -- large supply of working capital -- gives them similar competitive advantages over the surviving independents.(15) Not surprisingly, several conglomerates have sought to exploit these advantages by moving into publishing: ITT, Litton, RCA, Xerox, Raytheon, MCA and NBC, among others.

The Effect of Vertical Acquisitions On Surviving Independent Publishers

(i) Independent Paperback Publishers

A handful of paperback publishers control the lion's share of the mass market paperback book industry: Bantam, Dell, Avon, New American Library, Fawcett, Warner Books and Popular Library. Most of these companies have been acquired in recent years by trade book publishers or conglomerates that own trade book houses and/or other communications enterprises: Doubleday, CBS, RCA, Los Angeles Times, Warner Communications, MCA, etc.

These acquisitions increase the competitive disadvantage of independent paperback publishers in the intense battle for access to retail outlets. The "acquired" mass market publishers, thanks to their owners' "deep pockets", have more money and other resources to use for promotion and distribution. For example, the May 2nd PUBLISHERS WEEKLY carries a two-page advertisement for Fawcett and Popular Library, the two formerly independent paperback houses acquired by the Columbia

Broadcasting System. The advertisement informs retailers and wholesalers across the country:

> "And now more than ever, Fawcett/Popular Library gets the CBS sell-in, so you'll sell out. There's a lot that's new at Fawcett/Popular Library -- new ideas, new books, new and exciting ways to sell them. And the more we sell, the more you sell."
>
> (This page shows television screens filled with Fawcett/Popular Library book covers)
>
> "NOW THE WHOLE FAWCETT BOOKS GROUP GETS TURNED ONTO THE CBS TREATMENT.
>
> "Television in markets coast-to-coast reaching over 750,000,000 (sic.) people!
>
> "Network radio in 250 markets ... every single corner of the country reaching 220,650,000 people!"
>
> ....
>
> "The Fawcett Books Group has the #1 lists. And now CBS adds the push to make them #1 in sales, too. We're spending more than any other publisher to promote our leaders."

Their owners' "deep pockets" also enable the "acquired" paperback publishers to outbid their competitors for the paperback rights to best-selling hardcover trade books. In addition to large profits, these titles give a paperback publisher further competitive leverage. These paperback best sellers are, as the CBS ad puts it, "leaders" -- they help the publisher sell its other titles to wholesalers and retailers, and diminish the opportunities of smaller publishers to obtain shelf space for their books.

The vertical integration of hardcover and softcover houses creates another probable handicap for independent paperback publishers, in bidding for reprint rights. An "acquired" paperback company can

afford to out-bid its competitors on books published by its owner or a related trade book subsidiary. Since the money paid by a paperback publisher usually is shared by the author and hardcover publisher, a share of the price paid by the "acquired" paperback publisher never leaves the corporate family.

(ii) Independent Trade Publishers

The integration of paperback publishers into trade book companies poses a further threat to competition in trade book publishing. A trade publisher can auction mass market reprint rights in a best seller to competing paperback houses But below the best seller level, it must vie with other hardcover firms to sell paperback licenses. Comparatively few trade books are acquired by paperback publishers each year for mass market softcover editions.

Before the vertical integrations independent paperback publishers chose from the many trade books available on the basis of merit and market potential. The integrations create the probable threat that "acquired" paperback publishers increasingly will select trade books published by their owners or related subsidiaries, reducing the number of books independent trade publishers could license to them.(16) Since the income from these licenses is important to independent trade book houses, any reduction in reprint contracts would make it more difficult for them to contend with their larger hardcover competitors.

The Effects of Mergers and Takeovers on Authors and Readers

(i) Reduction of the Author's Bargaining Power and Income

Publishing contracts are licenses of rights granted to authors by the Copyright Act. The individual author occupies an inferior

bargaining position in negotiating the contract. He or she is dealing with a large corporation that issues many books each year and can choose from a great number of authors eager to be published. The elimination of many independent trade publishers further weakens that bargaining power, by reducing the number of potential publisher-purchasers in the marketplace. The publisher who wants an author's book can drive a harder bargain if the author has few other places to go. Except for a few best selling authors, the trend to concentration has the probable effect of further reducing the individual author's bargaining power and income.

(ii) Reduction in the Number of Books

The trend to concentration threatens another restrictive effect of concern to book buyers and authors. James Silberman, then editor-in-chief of RCA-owned Random House explained (N.Y. Times, October 27, 1975, p.31) that conglomerate owners of publishing houses "are interested only in the bottom line" -- i.e. "overall profit and loss figures."

While he thought this concern so absorbed the conglomerates that they were not "interested in telling us (their publishing subsidiaries) how to run our business", the evidence is to the contrary. Conglomerate-owned publishing firms and publishing complexes which have expanded by acquisition appear to be basing their publishing decisions more and more on "the bottom line", rather than on the professional standards that guided publishers when the industry contained many more independently-owned firms. There are indications that books of merit are being rejected

because estimated sales, while sufficient to earn profits, are not high enough to produce the return required by "the bottom line."

The same article quotes John Macrae, III, president of E. P. Dutton: "I must say that the trend is to novels of what I would call commercial quality. We are gambling more on fewer titles." And that trend is equally apparent for non-fiction.

The trend to concentration thus threatens to compel "acquired" publishing houses to concentrate more on books (and non-books) of commercial interest, to restrict authors' opportunities to publish books of merit that may not have immediate commercial appeal, and to deny the public access to such books. Several "acquired" firms have reduced their publication of works by distinguished "academic" authors. Further evidence of this restrictive effect is found in recent instances of books withdrawn from publication by "acquired" publishing houses, although they were being purchased by the public and earning royalties for their authors. In one such instance, a conglomerate-owned house quashed a paperback series of works by many of the nation's most distinguished historians, most of which had steady sales of two or three thousand copies a year. The "bottom line" prevailed over the interests of thousands of individuals who were buying books in the series.

(iii) Section 7 Was Intended to Protect The Public Against Such Restrictive Effects of Economic Concentration

A reduction in the supply of books, and increases in their cost, are two consequences of economic concentration which Sec. 7 was intended to prevent. Moreover, the section was enacted to avoid other socially undesirable effects. Its history clearly establishes "Congress'

fear not only of accelerated concentration on economic grounds, but also of the threat to other values a trend to concentration was thought to pose."(17) An essential value of a publishing "industry composed of numerous independent units" was that it assured the public of an opportunity to read new works of merit on a variety of subjects even if they did not satisfy the bottom line of conglomerate owners or earn as much profit as cosmetics, pet food or patent medicines. The enormous contribution to American culture made by that structure of independent firms is one of the values Section 7 should preserve.

The book publishing industry exists by virtue of the Copyright Act, which grants exclusive rights to authors to encourage "the production of literary works of lasting benefit to the world" and thus "advance the public welfare..."(18) The industry is protected by the First Amendment, whose purpose is to guarantee for the public "an uninhibited marketplace of ideas."(19) The trend to concentration of power in the book publishing industry, in violation of Section 7, threatens these fundamental values.

The Effect of Economic Concentration on the Marketplace of Ideas

"It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail rather than to countenance monopolization of that market..."

"It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences..." through that uninhibited marketplace.(20)

Books are the primary means of providing the public with that diversity of new ideas. And a publishing "industry composed of numerous

independent units" is essential to preserve the uninhibited marketplace of ideas. The very existence of many independently-owned publishing firms guarantees that new and controversial ideas will reach it. Under such conditions, even though many publishers may reject a book, there are many other firms to turn to. The trend to concentration sharply curtails this multiplicity of editorial and publishing viewpoints, thus constricting the marketplace.

Furthermore, the former existence of many independent publishers, engaged only in publishing, protected them from outside pressures on their editorial policies and judgments. As divisions and subsidiaries of conglomerates and large publishing complexes, formerly independent publishers are more susceptible to pressures on their owners. Government officials, customers and special-interest groups can implement their opposition to particular books or authors by pressure on the master's more profitable operations. Independently owned, a publishing house might accept a book on a new "Watergate" or a new "Pentagon Papers" scandal; owned by a corporate parent with a license pending before some government agency, it might well reject the manuscript.

The trend to concentration in the book publishing industry creates "the threat to other values" that Congress sought to avert by enacting Section 7 -- the threat of increasing restrictions on a major component of the "uninhibited marketplace of ideas."

The Authors Guild's Recommendations

The purpose of Section 7 requires that the Department of Justice or Federal Trade Commission initiate proceedings to put a halt to the process of mergers and acquisitions in the book publishing industry, and

to reverse the trend to concentration through divestiture and judgments or consent decrees to eliminate restrictive effects.

There are several measures which The Authors Guild believes should be taken to accomplish these results. We give one example here.

Vertically-integrated and conglomerate-owned publishers should, for example, be enjoined from compelling authors to cede to them rights to control use of the book in other publishing product markets. As the industry and public recognize, publishing has several distinct product markets for books of general interest: e.g., the hardcover "trade" market, the mass-paperback market, and the book club market. Each product market has different prices, methods of production and distribution.(21) Until recently, a given book would be published and distributed by a different and unrelated publisher in the trade book market, the mass-paperback market and the book club market, under separate contracts licensing publishing or other rights for the particular market. The same procedure is followed in other separate markets where the book may be used: motion pictures, television, anthologies, and "second serial" republishing.

Since the Copyright Act grants the author a collection of divisible rights in the book, each can be licensed or sold separately for the product market in which the book is to be used. However, these separate contracts are not made by the author, but rather by the trade publisher. Trade publishers customarily have exerted their superior bargaining power to compel the author to surrender to them control of the separate rights to use the book in the paperback, book club and other

separate markets. The contract for publication of the trade-hardcover edition cedes these author rights to the trade publisher, who then decides which other firms shall exploit the book in the mass-paperback and book club markets.

The systematic requirement by trade publishers that authors "tie-in" control of rights for other publishing markets probably violates Section 1 of the Sherman Act. It certainly violates the underlying premise of the Copyright Act which, as the Constitution requires, grants all rights in a book to its author. And the trend to concentration makes it imperative that the practice be halted to prevent the restrictive effects that Section 7 prohibits.

Obviously, a trade publisher which controls an author's paperback rights can license them to the paperback house it has acquired (or one owned by a common master) rather than to a competing mass-paperback publisher. The same threat also exists where the trade publisher owns, is owned by or belongs to the owner of: a book club, motion picture company, television network, magazine or newspaper. All are potential users of the book in their product markets. There is also the threat of more subtle restraints on competition.

For these reasons, The Authors Guild believes that one of the measures required under Section 7 is a decree prohibiting publishers from acquiring from an author rights to other product markets for the book. This would not prohibit agreements under which a trade publisher would share in income from paperback or similar licenses. But the decree would preserve the author's right to license his or her book separately in each product market.

In subsequent statements The Authors Guild will make other recommendations for implementing Section 7's prohibition against the trend to concentration in the book publishing industry. At this time we briefly mention two of them. It is likely that the restrictive effects of concentration through mergers and acquisitions requires a prohibition against self-dealing between units of a publishing complex which function in different publishing product markets. It also appears that the discount practices of large publishing firms, including mixed-title quantity discounts, increasingly will place independent publishers and independently-owned bookstores at a competitive disadvantage.

As the national society of professional writers, The Authors Guild is deeply concerned by the unceasing trend to concentration of economic power in the American book publishing industry. Obviously, our concern is in part motivated by its adverse effect on our nearly 5,000 members who create the works published by the surviving independent publishers, the expanded publishing complexes, and the firms absorbed by conglomerates. But we are even more concerned by the trend's corrosive effects on the marketplace of ideas, which requires a publishing industry "composed of numerous independent units..." Section 7 must be invoked now to protect that essential structure.

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REFERENCE WORKS WHICH LIST MERGERS AND ACQUISITIONS

Mergers And Acquisitions In The Publishing Industry Are Listed In The Following Source Materials:

The Literary Market Place: 1961-62 (R.R. Bowker Company)	Book Trade Mergers, 1958-1960 (at pages 93-95)
The Literary Market Place: 1962-63	Book Trade Mergers, 1961-62 (at page 90).
The Bowker Annual of Library And Book Trade Information: 1971	Book Trade Mergers, 1962-1970 (at pages 315-323)
The Bowker Annual: 1972	Book Trade Mergers, 1971 (at page 74)
The Bowker Annual: 1973	Book Trade Mergers, 1972 (at page 107)
The Bowker Annual: 1974	Book Trade Mergers, 1973
The Bowker Annual: 1975	Book Trade Mergers, 1974 (at page 172)
The Bowker Annual: 1976	Book Trade Mergers, 1975 (at page 194)
The Literary Market Place: 1976-77	Book Trade Mergers, 1975-76 (at page 107)
The Literary Market Place: 1977-78	Book Trade Mergers, 1976-1977 (at page 117)

Other Mergers/Acquisitions Include:

David McKay, acquired by Morgan Grampian (U.K.)

Frederick Praeger, acquired by CBS, Inc., from Encyclopaedia Britannica (1977).

T. Y. Crowell (and John Day, Abelard-Schuman, Criterion, some Funk & Wagnalls references), acquired by Harper & Row, from Dun & Bradstreet (1977).

ANNOTATIONS

1) Brown Shoe Co. v. U.S., 370 U.S. 294 (1962), at pp. 332, 333

2) Brown Shoe Co., p. 317

3) Brown Shoe Co., p. 317

4) Brown Shoe Co., p. 321 (n. 36)

5) Brown Shoe Co., p. 333

6) Reynolds Metal Company v. Federal Trade Commission, 309 F.2d 223 (1962)

7) Federal Trade Commission v. Proctor & Gamble Co., 386 U.S. 568 (1967)

8) Brown Shoe Co., p. 317

9) Brown Shoe Co., p. 332

10) Brown Shoe Co., p. 333

11) Proctor & Gamble Co., p. 577

12) Brown Shoe Co., p. 316 (n. 28)

13) Brown Shoe Co., p. 316

14) Brown Shoe Co., p. 333

15) Reynolds Metal Company, p. 229

Proctor & Gamble Co., p. 575

16) Reynolds Metal Company, p. 229

Brown Shoe Co., p. 324

17) Brown Shoe Co., p. 316

18) Mazer v. Stein, 347 U.S. 201, 219 (1954)

19) Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 390 (1969)

20) Red Lion Broadcasting Co., Inc., p. 390

21) Brown Shoe Co., p. 325